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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,323	12/16/2003	Richard Boden	IFF-0017	7933
26259	7590	02/17/2006	EXAMINER	
LICATLA & TYRRELL P.C. 66 E. MAIN STREET MARLTON, NJ 08053			GANEY, STEVEN J	
			ART UNIT	PAPER NUMBER
			3752	
DATE MAILED: 02/17/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/738,323

Applicant(s)

BODEN ET AL.

Examiner

Steven J. Ganey

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on January 19, 2006, which has been fully considered in this action.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wefler et al in view of Orson, Sr.

Wefler et al discloses a dispensing device comprising all the featured elements of the instant invention, note active gel col. 4, line 32 and wick col. 4, lines 54-65, except for the specific oil or fragrance present in the active gel in the claimed range be percent weight and the emanator in physical contact with the end of the wick opposite the reservoir. With respect to applicant's statements of intended use, i.e. (for storing an active gel comprising an oil or fragrance present in the active gel at about 90 to 99.8 percent by weight), the apparatus of Wefler et al is capable of performing applicant's intended use and would perform equally as well with the claimed active gel and oil/fragrance percent weight range. Also, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the oil or fragrance in the percent by weight range in the active gel, since it has been held that where the

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general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPW 233. Orson, Sr. discloses a dispensing device comprising an active gel, col. 8, lines 2-37, and a wick with an emanator in physical contact with the wick, col. 6, lines 39-68. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an emanator for the wick of Wefler et al, as taught by Orson, Sr. since with such a modification the addition of the emanator facilitates diffusion of the oil or fragrance into the surrounding environment by the process of evaporation.

As to claim 7, note col. 5, lines 33 and 34 and "p-dichlorobenzene" of Wefler et al.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1 and 3-7 have been considered but are moot in view of the new grounds of rejection. See paragraph 3.

#### ***Conclusion***

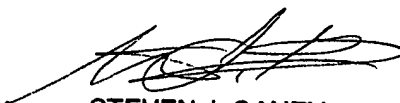
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899. The examiner can normally be reached on Monday, Tuesday, Wednesday, and Thursday from 8:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (571) 273-8300.

sjg

2/6/06



STEVEN J. GANEY  
PRIMARY EXAMINER

2/6/06